



The Task Force on Court Facilities  
455 Golden Gate Avenue, San Francisco, CA 94102-3660

**FINANCE AND IMPLEMENTATION COMMITTEE**  
**Conference call report**  
October 4, 2000

<b>TASK FORCE ATTENDEES:</b>  <b>COMMITTEE MEMBERS:</b> <b>PRESENT:</b> Mr. David Janssen, Chair Mr. Greg Abel Mr. Fred Klass Hon. Diane Wick  <b>ABSENT:</b> Hon. Charles Smith	<b>PRESENTERS:</b> Dr. Thomas Gardner, VITETTA Mr. Bob Lloyd  <b>TASK FORCE STAFF:</b> Mr. Bob Lloyd Mr. Bob Emerson  <b>CONSULTANTS TO THE TASK FORCE:</b> Dr. Thomas Gardner, VITETTA Mr. Jay Smith, DMJM Ms. Kit Cole, VITETTA  <b>GUESTS:</b> Mr. John Abbott, Orange County Counsel's office Ms. Catherine Knighten, Orange County Mr. Rubin Lopez, CSAC Ms. Sally Lukenbill, Department of Finance Mr. Nick Marinovich, San Diego General Services Agency Mr. John Van Whervin, Los Angeles Superior Court <i>(Others may have been present but not identified on the telephone)</i>
--	--

**Agenda**

1. Maintaining the flow of projects in the pipeline: a discussion of creating an incentive for counties and courts to continue construction
2. Establishing the threshold for rejection of buildings by the state. "Deficient buildings" report included for reference.
3. Elements that could be included in the MOE between the state and the counties
4. Report from Bob Lloyd regarding the "double count" issue
5. Summary of language approved/amended by Task Force at August 30 meeting and amended by the Committee during the September 20 conference call
6. Draft of Phase 5 report for review and comment by the Committee.

**Agenda Item #1 – Maintaining the flow of projects in the pipeline**

The Committee requested that the consultants re-draft the language prepared for the call to reflect the contents of prior legislation related to this issue and present that to the Committee at its next meeting.

**Agenda Item #2 - Establishing the threshold for rejection of buildings by the state**

The Committee put this issue over to discuss at its next meeting.

### Agenda Item #3 - Elements that could be included in the MOE between the state and the counties

The Committee discussed the materials provided by the consultants and requested that a number of amendments be made to the language, as follows:

An MOE shall establish each county's annual financial obligation to the state with respect to court facilities. The MOE shall be determined by calculating the cost of facility maintenance items as outlined below. Items that have relatively stable costs are averaged over five years and adjusted to account for inflation to the date of transfer. Other costs such as lease payments are calculated differently to recognize the unique nature of the expenditure.

~~The "last five years" is agreed to be an average of the following fiscal years: The "five year average" means the average, adjusted to account for inflation to the date of transfer, of the following fiscal years: 1995-1996, 1996-1997, 1997-1998, 1998-1999, and 1999-2000. Costs shall be based upon actual county expenditures for those items listed. Exclusions include land, buildings, capital expenditures, major alterations or remodeling that change the function of the building, not maintenance, as well as parking provided in separate structures not dedicated solely to court use.~~

~~"Repair and maintenance projects" are included in the MOE and are defined in the SAM "as those projects that "continue the usability of a facility as its designed level of services." "Maintenance" includes any deferred maintenance. A repair, replacement or remodel, such as a new roof, replacing HVAC systems or components or modernizing a space without changing its function, are considered maintenance and are costs that are included in the five-year average. Any alteration or remodel that does not comply with the definitions in SAM are changes the function of the facility is Any non-maintenance (i.e., capital project), including betterment or alteration, as defined in the SAM, is not included in the MOE. Any alteration that is exempt must meet the criteria established in Section 6806 of the State Administrative Manual (SAM).~~

Lease payments are included in the calculation of the MOE. The goal is to transfer resources that currently provide for a facility. Therefore, the calculation of the amount to be extended indefinitely shall be based on the obligations stated in the lease. To ensure sufficient resources to cover the obligations assumed by the county, the calculation of the MOE shall include any contractual increases in the years that they are effective in the lease, instead of a five-year average. ~~Any similar condition of a lease that changes the ongoing obligation shall be taken into account in the calculation of the MOE. Years following the end of the lease shall be the same as the last year of the lease if all obligations are covered.~~

~~Within six months Following the adoption of legislation enacting the recommendations of the Task Force, and the completion of MOEs and MOUs as a result of negotiations between the Judicial Council and the counties, each county shall submit expenditure data to the Department of Finance and Judicial Council. The county auditor-controller shall review calculate and certify the accuracy and completeness of the submitted maintenance cost data, consistent with legislation and the provisions of SAM as factual and correct the cost of maintenance as outline in the legislation.~~ The Department of Finance and Judicial Council will review and concur with the proposed MOE prior to adjusting the amounts in each year for inflation.

The Department of Finance shall use the four indices from the US Census Producer Price Index as follows: building, cleaning and maintenance; operating office property; construction maintenance and repair; building, janitorial and custodial for the purposes of this calculation. The Department of Finance shall adjust each of the five years cost data using the combined index, and then averaged to insure that all cost items are brought up to the value of those items in the year the negotiations are completed.

The MOE shall not include any expenditure related to a rejected facility or the portion of any court facility for which the county retains responsibility. In no event shall the MOE be payable by a county

prior to the county and the Judicial Council entering into an MOU with respect to court facilities in that county.

**\*NOTE:**

“‘Alteration’ means any modification of existing space (buildings, structure or other facilities) that change the use as to function, layout, capacity, or quality. Typical alternations include demolition of fixed partitions or initial installment of carpeting and moveable partitions.” (SAM, page 6806 – cont.1)

“‘Betterment’ means any modification that increases the designed level of services or life expectancy of a facility or other state infrastructure (e.g., seismic improvements, upgrades, etc.)” (SAM, page 6806 – cont.1)

### MOE Elements and Associated Calculations

Element	Calculation	Additional Conditions
1. Purchase of land and buildings	Not in MOE	
2. Construction and construction services	Not in MOE	
3. Space rental/lease (except storage for court records)	In the MOE at rate specified in lease agreement. The allocation is a permanent element of the MOE.	.
4. Building maintenance and repairs, <del>including alterations and remodeling other than for change of function, as defined by the SAM</del>	Five-year average	<del>Repairs or remodels that continue the usability of a facility at its designed level of service shall be included in the MOE. Defined pursuant to the SAM.</del>
5. Alterations <del>or remodels</del> for change of function, <i>as defined by the SAM.</i>	Not in MOE	<del>Only those costs that specifically alter the function of the building and that meet the definition under section 6806 of SAM will be exempt from MOE. Defined pursuant to the SAM.</del>
6. Purchase, installation, and maintenance of H/V/A/C equipment	Five-year average	
7. Elevator purchase and maintenance	Five-year average	
8. Landscaping and grounds maintenance services	Five-year average	For mixed use buildings, prorate portion of property equal to portion of court spaces within the overall complex.
9 a. Parking lot maintenance (dedicated to courts)	In MOE at five-year average	
9 b. Parking lot maintenance (general public parking that may be used by courts)	Not in MOE	Provision for continuing future use shall be included in MOU.
10. Depreciation of building	Not in MOE	
11. Insurance on building	Last year of five year period	In proportion to court spaces
12. Grounds liability insurance	Last year of five year period	In proportion to court spaces
13. Utility use charges	Consumption average for five years multiplied by last years rate	
14. Maintenance and repair of utilities	Five-year average	
15. Exterior lighting and security	Five-year average	
16 a. Juror parking (dedicated to courts)	In MOE at five-year average	Use of parking space and the cost of maintenance may be included in the transfer agreement
16 b. Juror parking (general public parking that may be used by courts)	Not in MOE	Provision for continuing future use shall be include in MOU

#### Agenda Item #4 – Language that would address the “double count” issue

Bob Lloyd presented information to the Committee regarding the double count issue. Rubin Lopez and Catherine Knighten also provided information on the issue. The Committee put this issue over until its next conference call/meeting.

## **Agenda Item #5 – Language approved/amended by the Task Force at its August 30 meeting**

*Strikeouts and italics reflect changes made by the Committee on the October 4 conference call.*

### **Responsibility**

1. The state shall ultimately be fully responsible for all court facilities, including providing facilities for current and future judges and staff.
2. Pursuant to AB 233, responsibility for providing court facilities for new judges and staff associated with those judges shall continue to rest with the state, after July 1, 2001.
3. Responsibility for providing court facilities shall remain with the counties until completion of the negotiations between the ~~Judicial Council~~ *state* and the counties.
4. Responsibilities of parties sharing mixed-use buildings shall be established by agreement.

### **Fiscal Neutrality**

- ~~1. Responsibility for funding existing debt on facilities shall remain with the counties until the debt is retired, either directly or by transferring the revenue stream and debt to the state.~~
- ~~2. The control of court facilities should transfer to the state without any fiscal gain or loss to either the counties or the state.~~
  - 1. The control of court facilities should transfer to the state without any fiscal gain or loss to either the counties or the state.*
  - 2. Responsibility for funding existing debt on facilities shall remain with the counties until the debt is retired, either directly or by transferring the revenue stream and debt to the state.*
3. If title transfers, it shall do so without payment for capitalized value of buildings and the land associated with those buildings. Determination of appraised value shall not be necessary as a condition of transfer.
4. Existing non-Rule 810 facility operations and maintenance costs shall continue to be funded by the counties through maintenance of effort (MOE) agreement.
5. The MOE will be determined based on a calculation of the average of the most recent five fiscal years of non-Rule 810 allowable costs related to facilities. Additionally, the amounts for each year shall be escalated to current dollars *to the effective date of the negotiated transfer agreement between the Judicial Council and the counties*, using the consumer or producer price indices for each year (or combination thereof), and averaging the resulting amounts, unless determined otherwise. ~~The MOE amount will be fixed based upon the adjusted five-year average, as adjusted for escalation to the effective date of the negotiated transfer agreement between the state and the counties.~~ Prior to \_\_\_\_\_ (date) each county shall submit to the Department of Finance data regarding non-810 facility costs from the most recent ~~three~~ *five* fiscal years. Prior to being submitted to the Department of Finance, all data shall be certified by the county auditor.
6. Revenue generated by the Courthouse Construction fees will transfer from the counties to the state, less any funds obligated to debt service, to the extent that such debt remains with the counties. Should the debt transfer to the state, the corollary debt service stream shall also transfer to the state.

### **Principles for Transfer**

1. It is critical to expedite the transfer of responsibility for court facilities to the ~~Judicial Council~~ *state*.
2. The transfer of responsibility shall be accomplished through negotiations between the Judicial Council and the counties, in consultation with the local court.
3. The Judicial Council shall not hold the counties liable for deferred maintenance that existed ~~in the base year at the time responsibility for facilities is transferred~~ and for which no funds were committed to address that maintenance.
4. Issues regarding occupancy and use of space within a mixed-use building shall be agreed upon by the Judicial Council and the counties and shall be spelled out in an MOU.
5. The Judicial Council may reject the transfer of unsuitable buildings, in which case the county will continue to be responsible for providing the court with suitable and necessary space. A building that is “unsuitable for court use” is defined as any building with significant health, safety or seismic deficiencies. All other single use court facilities shall transfer to the state, unless mutually agreed to by all parties. Counties may appeal rejection of an unsuitable building by the state to the State Public Works Board. The “burden of proof” to demonstrate the justification for which the facility was rejected lies with the state. In the event that a building is rejected due

to significant deficiencies, the county shall have the option of correcting the significant deficiencies prior to transfer, or furnishing the state a sum of money equal to the cost of the remedy. The state may use county's contribution for renovation or replacement of the facility. Should correction of the significant deficiencies be determined as unfeasible, the county shall be obligated as follows:

- a) To provide suitable court facilities under the current law, or
  - b) To provide to the state an amount of money equal to the cost of replacement of the facility with a suitable facility of equivalent amount of space."
6. Historically significant facilities, may or may not transfer, but must be made available to the ~~state~~-Judicial Council for court use or the county can opt to provide suitable and adequate court facilities in an alternative facility. Facilities considered "historic" shall either be registered on the state's historic register (pursuant to Health and Safety Code 18950) or be eligible for inclusion on the register.

### Implementation Issues

1. Negotiations between the Judicial Council and the counties regarding the transfer of facilities must be complete within three years after legislation implementing the Task Force's recommendations becomes effective.
2. The Judicial Council, in consultation with the local courts, and the counties will negotiate on a county-by-county and building-by-building basis in order to determine the most optimal way to provide court facilities in that county.
3. The state Public Works Board will be the final arbiter in any disputes between the Judicial Council and counties during the building-by-building negotiations.
4. All counties shall participate in the transfer of responsibility for court facilities from the counties to the ~~Judicial Council~~ ~~state~~.
5. Both the county and the Judicial Council are entitled to equity in court facilities, based on the respective proportional use of area by the courts and by non-court county functions, at the time that the MOU is determined, regardless of which entity holds title to the facility.
6. Any county funds or property that have been allocated, approved, appropriated, or committed for a court facility project by a county board of supervisors, by resolution or ordinance, shall remain committed to that project.
7. The Judicial Council reserves the right to require a county to complete a project in the design or construction phase prior to its transfer to the state.
8. The Judicial Council can negotiate design changes related to a court facility project with the county to the degree that the design changes do not increase the cost of the project to the county.
9. The Judicial Council reserves the right to dispose of surplus property when title for the property transfers to the state. Prior to disposing of court facilities that were previously the responsibility of the counties, the ~~Judicial Council~~ ~~state~~ shall comply with the requirements of Government Code section 11010.5 et seq (former #10).
10. Prior to the ~~Judicial Council~~ ~~state~~ making a decision to sell, lease or otherwise dispose of a court facility transferred from a county to the state, it shall consult and discuss the potential sale, lease or disposition with the affected county. The ~~Judicial Council~~ ~~state~~ shall also consider whether the potential new or planned use of the facility:
  - Is compatible the use of other adjacent public buildings.
  - Would unreasonably depart from the historic or local character of the surround property or local community.
  - Would have a negative impact on the local community.
  - Will unreasonably interfere with other governmental agencies that use or are located in or adjacent to the court facility.Additionally, the ~~Judicial Council~~ ~~state~~ shall consider whether the decision to cease using the facility or site outweighs a public good in maintaining it as a court facility or site.
12. In perpetuity, the counties shall transfer 75% of the unencumbered revenue generated by the Courthouse Construction fee to the ~~Judicial Council~~ ~~state~~ for allocation by the Judicial Council. The remaining 25% will be retained by the court and allocated pursuant to ~~current~~ *policies and procedures adopted by the Judicial Council and state law.*

## Principles for negotiation involving mixed-use buildings

*Strikeouts and italics reflect changes made by the Committee on the October 4 conference call.*

1. Responsibility for court facilities can be accomplished by the state either holding fee title or entering into a lease agreement with a county or a private landlord or any other mutually-agreed to mechanism.
2. The county and the Judicial Council each have equity rights to the space occupied respectively by the county and the court, regardless of which party holds title.
3. Neither the ~~state~~ Judicial Council nor the county shall charge each other rent for space that the county or the courts occupies at the time the MOU is determined. Costs associated with additional space will be paid by the agency desiring more space.
4. In the case of mixed-use buildings, the state and the county shall be responsible for the operations and maintenance costs associated with their proportional shares of the building, and the county shall also be responsible for furnishing its payments to the state for operations and maintenance ~~costs~~ under the terms of ~~the~~ its MOE for the court's share of the building, unless otherwise mutually agreed by the parties.
5. The sale of property is permissible, regardless of which party holds title; however, neither party can be displaced or forced to move at its expense, ~~except by mutual agreement.~~ *unless either party occupies 80% or more of a mixed-use facility. In such a case, the party occupying 80% or more shall be permitted to require that the minority occupant vacate the premises, should the majority occupant so desire.*
6. The cost of relocating from occupied space to new space will be borne by the agency desiring the new space. However, the departing party shall retain its equity interest in the vacated space.
7. The use of any space occupied by the county or the Judicial Council must be compatible with the facility and not substantially deteriorate or diminish the ability of either the county or the Judicial Council to use the remaining spaces effectively.
8. Should either party require additional space and wish to "buy out" the current tenant from its space, compensation will be made at the current market rate.
9. ~~Should unless either party occupy 80% or more of a mixed use facility, that party shall be permitted to require that the minority occupant vacate the premises, should the majority occupant so desire.~~

## Agenda Item #6 – Draft of Phase 5 report

The Committee put this issue over to the October 10 conference call.